IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

CLYDE MOODY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 01-374-SLR
	)	
RICHARD KEARNEY, STANLEY TAYLOR, JOHN DOE # 2, JOHN DOE # 3, and JOHN DOE # 4,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM ORDER

I. INTRODUCTION

On June 6, 2001, plaintiff Clyde Moody filed the present action pursuant to 42 U.S.C. § 1983,[1] alleging the violation of his Eighth Amendment rights by Sussex Correctional Institution ("SCI"), John Ellingsworth, and John Does # 1, 2, 3, and 4 (collectively, "defendants").[2] (D.I. 2) The court has jurisdiction over the present suit pursuant to 28 U.S.C. § 1331. While plaintiff is currently incarcerated at Delaware Correctional Center in Smyrna, Delaware, he was housed at SCI in Georgetown, Delaware, at the time of the alleged violation.

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[1]When he filed his complaint, plaintiff was acting pro se and proceeding in forma pauperis. (D.I. 1)

[2]At the time of the incident described in plaintiff's original complaint, John Ellingsworth was the warden of SCI, and John Does # 1, 2, 3, and 4 were the prison commissioner, a captain, a lieutenant, and a correctional officer, respectively. (D.I. 2)

(D.I. 2) Plaintiff's original complaint alleges that prison officials locked him in an unventilated room during the summer of 1985, causing him to suffer a severely debilitating heat stroke. (Id.) Plaintiff requests damages for pain and suffering, punitive damages, and damages to pay for mental and physical therapy. (Id.)

On March 12, 2002, the court dismissed plaintiff's claim as frivolous sua sponte, finding that the it was time-barred, since the original complaint indicated that the date of the alleged incident was sixteen years prior to the filing of the complaint. (D.I. 8) Plaintiff appealed, and the Third Circuit remanded the matter on May 22, 2003, so that this court could consider "whether [the] federal tolling doctrine should be applied to [plaintiff's] claims under Lake v. Arnold, 232 F.3d 360, 370 (3rd Cir. 2000), and, if so, whether the statute of limitations should be equitably tolled." (D.I. 20) The Third Circuit held "that the District Court should address this issue in the first instance if [defendants] raise the statute of limitations as a defense." (Id.) Newly identified defendants Taylor and Kearney have raised this defense in their opposition to plaintiff's motion for leave to amend. (see D.I. 56)

On March 9, 2004, the court recognized the appearance of an attorney on plaintiff's behalf. (D.I. 42) Defendant SCI then filed a motion for judgment on the pleadings on June 15, 2004,

alleging that the court lacks subject matter jurisdiction, 42 U.S.C. § 1983 is inapplicable to SCI, and the Delaware statute of limitations time bars plaintiff's claims. (D.I. 47, 48) On July 21, 2004, plaintiff filed a motion for leave to amend the original pro se complaint, correcting factual errors such as the date of the alleged incident and the names of the appropriate defendants. (D.I. 53 at 4)

The court presently considers the Third Circuit's order, plaintiff's motion for leave to amend the complaint, and defendants' motion for judgment on the pleadings. (D.I. 20, 47, 53) For the reasons that follow, the court finds that the equitable tolling doctrine is applicable to the case at bar. Moreover, the court finds that the plaintiff's substitution of Messrs. Kearney and Taylor for the John Doe defendants is permitted because they had constructive notice of the original complaint and knew or should have known that they would have been named as defendants but for plaintiff's factual mistake. Plaintiff's claim, therefore, is not time-barred, and his motion to amend the complaint is granted. Furthermore, because plaintiff's first amended complaint does not name SCI as a defendant, defendant SCI's motion for judgment on the pleadings is denied as moot.

II. BACKGROUND

Plaintiff's original complaint alleges that, during the summer of 1985, correctional officials at SCI locked him in a room without windows or ventilation. (D.I. 2 at ¶ 3) Plaintiff also alleges that, although he complained of being dizzy from the heat, prison officials failed to monitor his condition[3] and, as a result, he "suffered a heat stroke which has left him incapacitated." (Id. at ¶¶ 4-5) According to plaintiff's original complaint[4], he "cannot speak, write, [or] communicate and is paralyzed due to this stroke." (Id. at ¶ 6) In addition, plaintiff claims that he "cannot even wash or feed himself, and is left to the help of others." (Id.) Furthermore, it is contended in the original complaint that it took plaintiff so long to file the instant suit (i.e., more than sixteen years) because his "diminished capacity" makes it difficult for him to express himself. (D.I. 2 at ¶ 7)

On September 8 and October 14, 2003 (D.I. 31, 34), plaintiff requested counsel, noting his "inability to investigate the

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[3] At the time, plaintiff was being treated at SCI for schizophrenia. As part of his treatment, plaintiff was administered anticholinergic medicines which may, as a side-effect, inhibit a patient's ability to perspire. (D.I. 53 at ¶ 2-3)

[4] Due to his severely diminished physical and mental capacities, plaintiff filed the pro se complaint with the assistance of an inmate paralegal, William Dahl. (D.I. 2)

facts." Id. Upon counsel's[5] review of parts of plaintiff's correctional and medical files, it became apparent that certain facts, including the relevant dates in plaintiff's original pro se complaint, were inaccurate. Most importantly, plaintiff's medical and correctional files indicate that the alleged incident actually occurred in July of 1999, **not** in the summer of 1985. (D.I. 53 at ¶ 12)

III. STANDARD OF REVIEW

"A party may amend the party's pleading once as a matter of course at anytime before a responsive pleading is served...." Fed. R. Civ. P. 15(a). "Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be given freely when **justice so requires**." Id. (emphasis added). Although motions to amend are to be liberally granted, a district court "may properly deny leave to amend where the amendment would not withstand a motion to dismiss." Centifanti v. Nix, 865 F.2d 1422, 1431 (3d Cir. 1989). Courts may deny leave to amend where they find "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of

[5] Although Jack C. Schecter, Esquire entered his appearance on behalf of the plaintiff (D.I. 42), a substitution of counsel was filed on May 20, 2004, substituting Sean T. O'Kelly, Esquire and Leslie A. Polizoti, Esquire as principal counsel for plaintiff. (D.I. 51)

allowance of the amendment, [or] futility of amendment...." Foman v. Davis, 371 U.S. 178, 182 (1962). "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits." Id.

IV. DISCUSSION

Plaintiff seeks leave of the court to amend his complaint to correct factual errors contained in the original pro se complaint and name the appropriate defendants. (D.I. 53) While incorporating the allegations contained in the original complaint, plaintiff's first amended complaint identifies the date of the alleged incident as July 10, 1999. Id. at ¶ 12. Furthermore, plaintiff's amended complaint seeks to reflect the fact that he is no longer asserting a claim against SCI and identifies some of the John Doe defendants named in the original complaint[6]. Lastly, plaintiff seeks to amend his complaint to add Prison Health Services ("PHS"), the Delaware corporation that

[6] Although at the time of the incident (described in plaintiff's original complaint as the summer of 1985), John Ellingsworth was the warden of SCI, Richard Kearney was the warden during the summer of 1999. (D.I. 2, 53) Additionally, John Doe # 1 (prison commissioner) in the original complaint has been identified as Stanley W. Taylor, Jr.. Id. The identities of John Doe #2 (a captain), #3 (a lieutenant), #4 (a correctional officer), and John Doe Prison Health Services employees are still unknown to plaintiff. (D.I. 53)

provided healthcare services to SCI inmates during the summer of 1999, and its employees, as defendants. Id.

In support of his motion to amend, plaintiff argues that he has not exercised bad faith, does not have a dilatory motive, the motion is not unduly late, and the motion will result in no prejudice to the defendants because they knew or should have known of the errors in the original complaint at the time of the filing. (D.I. 53) Plaintiff states that the facts necessitating plaintiff's motion to amend did not come to light until June 14, 2004, just one month after plaintiff's unopposed motion to lift the stay to facilitate discovery was granted. (D.I. 53)

Defendants oppose plaintiff's motion for leave to amend on a number of grounds. (D.I. 56) First, defendants contend that the amended complaint attempts to add new defendants outside the statute of limitations period, thus violating Rule 15(c) of the Federal Rules of Civil Procedure[7]. Specifically, defendants

[7] Fed. R. Civ. P. 15 states in relevant part:

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders. ...

allege that Richard Kearney and Stanley Taylor were without sufficient notice of the original complaint and that plaintiff has failed to demonstrate that Kearney and Taylor "knew or should have known that, 'but for' Plaintiff's mistake, [they] would have been named as [] defendant[s]." (D.I. 56) Lastly, defendants maintain that the amended complaint is futile, pointing to plaintiff's inability to "**successfully** plead and **establish** 'deliberate indifference'" for supervisory personnel. Id. (emphasis added). Defendants do not contend that allowing the amendment will prejudice them or burden the court.

In his reply, plaintiff argues that the federal tolling doctrine should apply because "extraordinary circumstances exist." (D.I. 58) Plaintiff argues that, "[b]ecause [he] is essentially non-communicative due to the heat stroke that he suffered while in defendants' custody, he needed his

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(c) Relation Back of Amendments. An amendment of a pleading relates back to the date of the original pleading when
(1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or
(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or
(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

institutional and medical files to corroborate and supplement his memory, but was prohibited by law from obtaining those files."[8] Id. Therefore, plaintiff argues, the 2-year statute of limitations was satisfied because it should have been tolled until March 9, 2004, the date plaintiff became represented by counsel. Id.

Next, plaintiff alleges that the amended complaint relates back to the original pro se complaint. In support of this argument, plaintiff contends that: (1) the claims asserted in the amended complaint arose out of the same occurrence that was attempted to be set forth in the original pro se complaint; (2) the 120-day period did not begin to run until June 9, 2003, the date this court ordered plaintiff's original complaint to be served; (3) Messrs. Kearney and Taylor had timely and constructive notice of the complaint via the identity of interest method of constructive notice and defendants have not alleged any prejudice if they had in fact received timely notice; and (4) sole possession of the records necessitates a finding that the defendants knew or should have known that they would have been named as defendants but for plaintiff's factual errors in the original complaint. Id.

[8] Plaintiff is correct in noting that prior to obtaining counsel, plaintiff was precluded from accessing any of the medical and correctional records relevant to this action. See 11 Del. C. § 4322.

Finally, plaintiff argues that his amendment is not futile. He argues that his amended complaint alleges personal involvement of the defendants, stating that "defendants failed to take measures" and "subjected [plaintiff] to the 120º temperature in his SCI cell." Id. He also asserts that his complaint is properly pled under Rule 8(a).

Upon review of the parties' arguments and the amendments to the complaint, the court shall grant plaintiff's motion. The court agrees with plaintiff that allowing the amendment will not unfairly prejudice defendant or cause delay to the case. Plaintiff's proposed amendment is based on facts that have been kept solely within the defendants' control throughout most of the case.

Moreover, the facts of this case strongly favor application of the federal tolling doctrine. While it is clear that extraordinary circumstances existed, namely that plaintiff "could not by the exercise of reasonable diligence have discovered essential information bearing on his claim," Cada v. Baxter Healthcare Corp., 920 F.2d 446, 452 (7th Cir. 1990), the federal tolling doctrine also requires that the state tolling rules contradict federal law or policy. Only in such cases is application of the federal tolling doctrine appropriate. See Heck v. Humphrey, 997 F.2d 355, 358 (7th Cir. 1993) (recognizing equitable tolling applicable to § 1983 actions where state

limitations provision conflicts with federal policy); Boos v. Runyon, 201 F.3d 178, 184 (2d Cir. 1999) (recognizing that tolling for a person's mental disability is "highly case-specific" but declining to apply in instant case); Grant v. McDonnell Douglas Corp., 163 F.3d 1136, 1138 (9th Cir. 1998) (permitting federal equitable tolling of a state limitations period for federal claims in exceptional circumstances but finding none present). Here, plaintiff correctly notes that 10 Del. C. § 8116[9] does not toll personal injury claims for incapacity. Accordingly, application of Delaware's 2-year statute of limitations would preclude plaintiff from asserting violations of his Eighth Amendment rights. The court also finds that defendants' arguments that plaintiff failed to satisfy the requirements of Rule 15(c) are unpersuasive.

Furthermore, defendants' argument that the facts alleged in the amended complaint are insufficient to establish liability under a theory of respondeat superior misses the point. Plaintiff correctly asserts that litigants "are entitled to discovery before being put to their proof." Alston v. Parker,

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[9] 10 De. C. § 8116 reads:

If a person entitled to any action comprehended within § § 8101-8115 of this title, shall have been, at the time of the accruing of the cause of such action, under disability of infancy or incompetency of mind, this chapter shall not be a bar to such action during the continuance of such disability, nor until the expiration of 3 years from the removal thereof.

363 F.3d 229, 233 n.6 (3rd Cir. 2004). While the doctrine of futility allows the court to refuse any amendment that fails to state a cause of action, Cureton v. NCAA, 252 F.3d 267, 273 (3d Cir. 2001) (citations omitted), the plaintiff has clearly met his burden by alleging multiple Constitutional violations against the specific individuals named in the amended complaint.

V. CONCLUSION

Therefore, for the reasons stated at Wilmington this 13th day of October, 2004:

1. Plaintiff's motion to amend (D.I. 53) is granted. Plaintiff's first amended complaint is hereby filed as of the date of this order.

2. Defendant's motion for judgment on the pleadings (D.I. 47) is denied as moot.

Sue L. Robinson
United States District Judge